



Butry00@aol.com
04/25/2006 07:41 PM

To Caroline Brown/DC/USEPA/US@EPA
cc Mike Cook/DC/USEPA/US@EPA, Matt
Straus/DC/USEPA/US@EPA, Matt
Hale/DC/USEPA/US@EPA, Barry
bcc
Subject final version for April 24, 11:00 AM

Attached please find the final version of the briefing document for tomorrow's meeting. Its basically the same, with some minor edits.

Thanks..



Sylvia Tyson---06-04-26 Agriculture final.doc

EXHIBIT

3

Agriculture, Poultry Processing and the RCRA and CERCLA Programs

I. Background:

- The Attorney General of Oklahoma has sued poultry processors in OK/AR and alleges that:
 - Phosphorus and phosphorus compounds and nitrogen and nitrogen compounds are hazardous substances under CERCLA.
 - The entire Illinois River watershed is a “facility” under CERCLA and that there has been a “release” through land application of litter(normal application of fertilizer under CERCLA is not discussed).
 - Land application of dry poultry litter as a fertilizer is a solid waste under the RCRA statute.
- Several major chicken processors are located in western Arkansas and eastern Oklahoma:
 - Growers are independent contractors and family farmers.
 - The litter is bedding material from barns(peanut hulls, rice hulls, and manure and urine from the growing operations).
 - The dry litter is excellent fertilizer.
 - Commercial fertilizer would not be a cost-effective nor desirable substitute.
- EPA clarification of the status of litter under RCRA and CERCLA is needed to avoid confusion and disruption in the poultry industry and in agriculture in general.

II. Description of Issues

- CERCLA:
 - Phosphorus and phosphorus compounds, nitrogen and nitrogen compounds
 - There are thousands of phosphorus and nitrogen compounds known to science.
 - Where EPA has listed a category of compounds or mixtures, it has done so specifically(e.g. silver and silver compounds).
 - EPA has listed only elemental phosphorus and several specific phosphorus and nitrogen compounds(e.g. phosphoric acid, phosphorus trichloride, nitrogen oxide and nitrogen dioxide).
 - However, while this is the practice, EPA has not spoken directly on this precise issue.
 - “Normal Application of Fertilizer” and “Facility”:
 - The complaint alleges a “release” of hazardous substances through land application of litter.

- The “facility” would be the entire Illinois River watershed, where sources are not just producers, but also farms, cattle, treatment plants, development, etc.).
 - CERCLA’s exemption for normal application of fertilizer is not discussed in the complaint.
 - To date, EPA has not issued guidance on this point in this context.
 - City of Tulsa court found an issue of material fact.
- RCRA:
 - Complaint alleges that land application of litter is “discard” and therefore the litter is a solid waste subject to 7002 authority.
 - 1976 House Report states: “...Agricultural wastes which are returned to the soil as fertilizers or soil conditioners are not considered discarded materials in the sense of this legislation.”
 - Subtitle D solid waste criteria exclude these wastes, citing the 1976 report language.
 - EPA RCRA solid waste criteria for National Parks also exclude these wastes.
 - EPA’s hazardous waste regulations exclude animal manure returned to the soil as a fertilizer.
 - EPA has previously concluded that materials applied to the land for their intended use are not “discarded” (e.g. munitions, pesticides, grass residue).

III. Conclusion and Next Steps:

- This litigation has led to uncertainty and EPA clarification is needed because the AG’s theories present a major departure from historic interpretations and long standing industry practices.
- AG’s interpretations have significant implications for the CERCLA and RCRA programs.
- CERCLA and RCRA issues could be clarified through policy memoranda, interpretive guidance and/or rulemaking.
- Amicus may be requested in the longer term.
- The industry requests EPA to clarify these issues and proposes to contact EPA regarding next steps in a few weeks.